

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 February 2013

Public Authority: London Borough of Barnet
Address: North London Business Park
Oakleigh Road South
London
N11 1NP

Decision (including any steps ordered)

1. The complainant requested information about the amount of money London Borough of Barnet ("the Council") had spent on High Court proceedings in respect of the care of his late partner. The Council provided him with all the information it said it held on the matter. During the Information Commissioner's investigation it found more information, which it disclosed to the complainant.
2. The Commissioner's decision is that the Council breached section 1 of the FOIA by not providing all the information it held at the time of the request, but that it has now provided the complainant with the information it holds in response to his original request. He does not require any steps to be taken.

Background

3. The Council had concerns for the welfare of the complainant's late partner and took her into care. The complainant objected to this and so in 2002 the Council issued best interest proceedings in the High Court. The proceedings concluded in 2010 with a finding in favour of the Council's decision to place her in care.
4. The Council had attempted to recover the costs of care by placing a charge on the complainant's partner's house. The charge was registered at Her Majesty's Land Registry (HMLR) by the Council but the complainant applied to the Lands Tribunal for it to be cancelled. The

Lands Tribunal waited until conclusion of the High Court proceedings before reaching a decision.

5. In July 2011, the Adjudicator for HMLR dismissed the complainant's application for cancellation, leaving the Council's charge on the property and ordering him to pay the Council's defence costs.
6. It is fair to say that throughout the dispute the complainant has corresponded with the Council with great frequency, and that the tone of his correspondence has been forceful and at times, accusatory. He continues to raise issues in ongoing correspondence with the Council which appear to have been dealt with by way of concluded legal proceedings.

Request and response

7. On 17 January 2012, the complainant submitted the following request for information to the Council:

"The information requested concerns Statements of Accounts of the money spent by the Barnet Council to pursue Court Proceedings (Barnet Council, as the Claimant, took a High Court injunction) which began on the 15 August 2002 and officially came to an end on 14 April 2011...

I specifically emphasise that Statement of Accounts should be detailed and itemised and what is more they must be supported by evidential documents so that the accuracy of the information can be verified."

8. The Council responded on 15 February 2012. It provided an itemised breakdown of a total expenditure of £119,381.36, and provided quite detailed supporting documentation in respect of all but one of the figures. The Council did not indicate that it was withholding any of the information the complainant had requested, although it did state that no supporting documentation was available in respect of an Adult Services expenditure figure of £321.80.
9. The complainant wrote to the Council of 20 February 2012, expressing dissatisfaction with the response. He stated that certain information had been omitted from the information he had been sent. He named several individuals who had been involved in the High Court proceedings who did not appear to feature in the breakdown he had been sent. He wrote again on 3 March 2012 confirming that he wished the Council to review its handling of the request.

10. The Council wrote to the complainant on 20 July 2012, upholding its response of 15 February 2012. It maintained that it had fully responded to the request.

Scope of the case

11. The complainant initially contacted the Commissioner on 8 March 2012 to complain about the way his request for information had been handled. The Commissioner did not commence his investigation until September 2012, when the complainant had exhausted the Council's internal review procedures and supplied the Commissioner with copies of the request correspondence.
12. The Commissioner has considered whether the Council has responded to the request as required by section 1(1)(b) of the FOIA.

Reasons for decision

13. Section 1 of the FOIA states that:

"Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him."

14. In his request for an internal review, the complainant specified that he would have expected the Council to have disclosed information about costs incurred in respect of the work of 15 named individuals. The Commissioner asked the Council to respond on this point.
15. The Council explained that five of the named individuals were non-Council employees who were not acting on behalf of the Council and so it did not hold any information about any costs associated with their involvement in the court case.
16. In respect of a further six individuals, the Council explained that they were Council employees but the cost of any work they had undertaken in connection with the court case was not known as it formed part of their day-to-day, salaried jobs and had not been itemised, invoiced or otherwise recorded separately. It therefore contended that it held no relevant information in respect of those individuals.

17. The Commissioner has no reason to disbelieve the Council regarding the status of these individuals and has accepted that it does not hold information about the costs to it of the work done by them in respect of the High Court proceedings.
18. This left four named individuals, who are addressed in turn below. Although the individuals were referred to by name in the Council's response to the request, for the purposes of this decision notice they are referred to as A, B, C and D.

"A" (Council solicitor)

19. The complainant believed that costs incurred in respect of work done by A had been omitted from the Council's response of 15 February 2012.
20. The Council stated that the chargeable case costing incurred by A in respect of the High Court proceedings had been disclosed and referred the Commissioner to a document in an evidence bundle that it had submitted to the ICO earlier in the investigation.
21. The Commissioner noted that A was identified only as "MXB" in the document and queried whether this abbreviation had been explained to the complainant. The Council stated that it had not, but that the complainant had previously received letters from A in which this contraction of her name appeared and that it was therefore reasonable to believe he would have recognised "MXB" as referring to A.
22. The Commissioner accepted that the document had been disclosed to the complainant in the response of 15 February 2012, but disagreed with the Council that it would have been obvious to the complainant that "MXB" was in fact A. He considered the fact that the complainant had specifically queried the absence of A's name in the itemised information as being indicative of this. Under section 16 of the FOIA, which establishes a duty on public authorities to provide advice and assistance to requestors, where reasonable to do so, the Council had a duty to clarify this point.
23. The Commissioner instructed the Council to explain to the complainant that "MXB" was an identifier for A, which the Council did in a letter dated 9 January 2013.

"B" (external solicitor)

24. The complainant believed that costs incurred in respect of work done by B had been omitted from the Council's response of 15 February 2012.
25. The Council stated that the chargeable case costing relating to B in respect of the High Court proceedings had been disclosed and referred

the Commissioner to a document in an evidence bundle it had submitted to the ICO earlier in the investigation.

26. The document comprised 21 pages (consecutively numbered) of itemised billing, submitted for work carried out by B between 2006 and 2011. The Council stated that that it held no other information in respect of invoices relating to B.
27. The Commissioner accepted that this document had been disclosed to the complainant in the Council's response to the request. In view of the level of detail of the invoices (which are dated and itemised) and the Council's assurances on this point, the Commissioner is satisfied that, on the balance of probabilities, the Council holds no further, relevant information in respect of B.

"C" (external doctor)

28. The complainant stated that C had written reports relating to his partner's care and believed that the Council would have been invoiced for this work. He claimed that no such information was included in the Council's response of 15 February 2012.
29. The Council maintained that it had disclosed the only invoice it held relating to work carried out by C to the complainant in January 2012, outside of the FOIA (although it provided no evidence to support this).
30. Section 16 of the FOIA establishes a duty to provide reasonable advice and assistance to those making requests for information. To satisfy this, the Council should have established that the complainant was aware that he would not receive information about C in response to his request because it considered this had recently been provided. However, no reference to this was made either in the Council's response of 15 February 2012 or when the complainant specifically raised it in his letter of 20 February 2012.
31. Following the Commissioner's intervention the Council agreed to provide the information to the complainant again. It disclosed an invoice figure extracted from its casework management system and a copy of the only historical invoice it held, submitted in December 2006. The Commissioner is therefore satisfied that the information has now been supplied.

"D" (Council solicitor)

32. The complainant had explained that he had expected to see an invoice dated July 2011 for the sum of £18,438.10 for work done by D included in the information the Council sent him.
33. The Council explained that D was an employee and so did not invoice it for the work he did. It also stated that the figure the complainant cited pertained to costs awarded against the complainant in respect of the HMLR action and not to the High Court action which his request specified.
34. The Council stated that it had disclosed a copy of the chargeable case costing incurred by D in respect of the High Court case in its response of 15 February 2012. It conceded that this had not been included in the evidence package it had sent to the Commissioner, but maintained that it had definitely been sent. At the Commissioner's request it sent the chargeable costing to the complainant again on 9 January 2013.
35. Taking the first point, the complainant's request specified that he wanted information about the costs incurred by the Council in High Court proceedings that took place between 15 August 2002 and 14 April 2011. The Council has stated that the figure of £18,438.10 relates not to those proceedings, but to its defence of its application to recover care fees through a charge on property, heard by the Lands Tribunal and dated July 2011.
36. The Commissioner considers that the High Court proceedings in respect of the care of the complainant's partner and the Lands Tribunal hearing in respect of the Council's attempt to recover care fees are two separate matters. He therefore considers that any information about the costs awarded against the complainant in respect of the Land Registry charge is not covered by the scope of this request and that the Council is not obliged to provide it.
37. Turning to the second point, the Commissioner notes that the Council has been unable to provide proof that the chargeable costs spreadsheet was amongst the documents it disclosed with its response of 15 February 2012.
38. The Commissioner has not been able to obtain from the complainant a copy of the information he received from the Council, and so he cannot verify whether the chargeable costs spreadsheet was amongst the information he received. The Commissioner has therefore not considered this point further, save to note that he is satisfied the complainant now has the spreadsheet because the Council emailed it to him on 9 January 2013.

Other matters

39. The Commissioner notes that the Council took in excess of 100 days to provide the complainant with an internal review. It explained the delay as being due to the complexity of the case and other peripheral matters. However, the Commissioner notes that the internal review itself did not involve the consideration of complex exemptions, consultation with third parties, consideration of the public interest or any other issue which might explain the delay.
40. Under the FOIA, there is no obligation for a public authority to provide an internal review process. However, it is good practice (under the section 45 code of practice) and most public authorities choose to do so.
41. The Commissioner considers that where a public authority operates an internal review procedure, it should ensure the review takes no longer than 20 working days in most cases, or 40 in exceptional circumstances.
42. The Commissioner expects that in future the Council will ensure that internal reviews are conducted in a more timely fashion.

Right of appeal

43. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

44. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
45. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Jon Manners
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